

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG DIVISION**

**TIMOTHY SHAFFER AND MARY
SHAFFER,**

Plaintiffs,

V.

**NATIONAL HEALTH INSURANCE
COMPANY, and MERITAIN HEALTH,
INC.**

Defendants.

CIVIL ACTION NO. 1:17-CV-195

MERITAIN HEALTH, INC.'S MOTION TO DISMISS

NOW COMES Defendant, Meritain Health, Inc. (“Meritain”), by and through its undersigned counsel, and moves this Court for an order dismissing Meritain from this action in accordance with Rule 12(b)(6) of the Federal Rules of Civil Procedure. Meritain is entitled to the dismissal of Plaintiffs’ breach of contract because no contract exists between Plaintiffs and Meritain. In addition, Meritain is entitled to the dismissal of Plaintiffs’ common law bad faith claim because such a claim is premised upon the existence of a contract between the parties and there is no contract between Meritain and Plaintiffs. Next, Meritain is entitled to the dismissal of Plaintiffs’ West Virginia Unfair Trade Practices Act claim because the WVUTPA does not provide for claims against third-party administrators and Meritain is not in the business of insurance. Finally, Meritain is entitled to summary judgment with regarding to Plaintiffs’ civil conspiracy and aiding abetting claims because Plaintiffs fail to sufficiently plead the causes of action and

Plaintiffs have no tort upon which to base the same. A supporting memorandum is being filed contemporaneously and is incorporated as through set-forth verbatim herein.

Dated: December 6, 2017

MERITAIN HEALTH, INC.

By: Hendrickson & Long, PLLC

/S/ John H. Tinney, Jr.

John H. Tinney, Jr. (W.Va. Bar # 6970)

John K. Cecil (W.Va. Bar # 9155)

214 Capitol Street

Charleston, WV 25301

(304) 346-5500

(304) 346-5515 (fax)

jtinney@handl.com

jcecil@handl.com

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CERTIFICATE OF SERVICE

I hereby certify that on 6th day of December 2017, I electronically filed the foregoing
“**Meritain Health, Inc.’s Motion to Dismiss**” with the Clerk of the Court using the CM/ECF
system which will send notification of such filing to the following:

Alan N. Karlin, Esquire
Jane E. Peak, Esquire
Allan N. Karlin & Associates
174 Chancery Row
Morgantown, WV 26505
Counsel for Plaintiffs

Charles R. Bailey, Esquire
Jordan K. Herrick, Esquire
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
Charleston, WV 25337-3710
*Counsel for Defendant National
Health Insurance Company*

/s/ John H. Tinney, Jr.
John H. Tinney, Jr. (WV Bar #6970)